At the hearing of the application by the Board, the Board reserved for consideration by the High Court the following questions of law:—

(1) whether Clause 8 of the partnership agreement operated as an assignment of the tenancy of Abdul Kadir to the Kwong Shin Kongsi.

(2) if not, whether the Kwong Shin Kongsi is an "other person interested" within the meaning of Section 8(3) of the Control of Rent Ordinance, 1948 and is therefore able to apply to the Board for the purpose of having the rent paid or due in respect of the premises fixed for any period and, if so, what period.

As regards (1), the tenancy between the Respondent and Abdul Kadir contained no restrictive covenant concerning assignment and therefore the tenancy was assignable. It was not disputed that Clause 8 of the partnership agreement was an agreement to assign by Abdul Kadir for valuable consideration, and it was argued on behalf of the Applicants that this agreement must be regarded in equity as an actual assignment in that equity looks upon that as done which ought to be done or which is agreed to be done — Vol. 20 Hailsham Edition of Halsbury, Laws of England, page 89 para. 82).

This maxim was considered by Lindley, L.J. in *In Re Anstis*[2] and in his judgment at page 605 he stated:—

> Equity, no doubt, looks on that as done which ought to be done; but this rule, although usually expressed in general terms, is by no means universally true. Where the obligation to do what ought to be done is not an absolute duty, but only an obligation arising from contract, that which ought to be done is only treated as done in favour of some person entitled to enforce the contract as against the person liable to perform it.

This case was cited with approval by Eve, J. in *In Re Plumptre's Marriage Settlement*[3].

The Respondent was a complete stranger to the partnership agreement, he was in fact unaware of it until some two years after it had been signed and there has never been any agreement to assign which the applicants could have enforced against him. The position is therefore that, although the tenancy of Abdul Kadir was assignable and although he agreed with the Applicants to assign it, he never did in fact assign it and his agreement to assign cannot operate as an assignment against the Respondent. Further, once a notice to quit had been served upon Abdul Kadir by the Respondent and he had continued in possession as a statutory tenant, his right was merely a personal right to retain possession and could not be assigned to another — *Keeves v. Dean*[1].

I have now to consider the second question, namely, whether the applicants are an "other person interested" within the meaning of Section 8(3) of the Ordinance. Having formed the opinion that there was no assignment of the tenancy to the applicants, and there being no contention by the Applicants that they were tenants of the Respondent or sub-tenants of Abdul Kadir, it is difficult to see upon what foundation this alleged interest is based. There has never been any privity of estate between the applicants and the Respondent. All that happened is that during his tenancy of the premises, Abdul Kadir allowed his partnership business with Hoe Chee Ming, which was known as the Kwong Shin Kongsi, to be carried on in the premises. The rent was always paid by Abdul Kadir and the receipts were issued in his name (paragraph 18 (1) of special case), and although as long as he allowed his partnership business to be carried on at the premises, the rent payable by him may have been of some concern to his fellow partner, nevertheless the partnership in my opinion had no interest in the premises. Again, although the Applicants continued to occupy the premises after Abdul Kadir had retired from the business and vacated the premises they had no right in law so to do. From that date they were in my opinion trespassers and in the circumstances were not such interested persons as to enable them to apply to the Board for the purpose of having the rent paid or due in respect of the premises fixed for any period.

I order the Applicants to pay the costs of the proceedings before me by virtue of the provisions of Section 10 (3) of the Ordinance.

Application Dismissed.

DIN BIN MAT AKIP v. SOM BINTI SAAID.

[Orig. Civ. Juris. (Callow, J.) September 24, 1949]

[Kedah — Civil Suit No. 63 of 1949]

Limitation Enactment, Kedah, S. 26 — Action for administration of estate of Muslim — Whether the action is barred by limitation — Administration of Estates Enactment, Kedah.

In this case the deceased died in 1918 leaving land in Kedah. No application for Letters of Administration was made but near relatives of the deceased continued in occupation of the property. In 1948 the plaintiff sought and obtained Letters of Administration. At this

application the defendant and some of the other relatives were present but raised no objections. The plaintiff brought the action to get a surrender of the deeds and for accounts. To this the defendant raised the preliminary issue of limitation, pleading S. 26 of the Limitation Enactment.

Held, that S. 26 of the Limitation Enactment does not apply with regard to a suit whose object is the distribution of an estate by an Administrator whose appointment was presumably with the assent of the defendant and in order to distribute the estate.

CIVIL SUIT.

James Taylor for the Plaintiff.

Lim Cheng Ean for the Defendant.

Cur. Adv. Vult.

Callow, J. : — The claim is for surrender of estate and title deeds, for account, and for payment on account. Mr. James Taylor appeared for the plaintiff and Mr. Lim Cheng Ean appeared for the defendant.

The facts are that Said bin Mat Amin died in 1918, and on his demise left property consisting of :—

(i) Bendang land S.O. No. 11124, Mukim of Gunong, Area 4r. 346 J. 20 sq. ft. ;
(ii) Bendang land S.O. No. 16277, Mukim of Gunong, Area 7r. 057 J. 20 sq. ft. ; and
(iii) One house.

No application as then made for Letters of Administration, and near relatives of the deceased continued in occupation of the property. It would appear that the Administration of Estates Enactment 1334 (1915 A.D.) was disregarded. For convenience the genealogical tree of the family is attached and marked "Z".

On the 30th of October, 1948, the plaintiff sought and obtained a grant of Letters of Administration. At this application the defendant, Ariffin bin Ahmad, Ibrahim bin Ariffin, Hamid bin Man, Din bin Abdullah and Bunga binti Mat Akib were present. No objection or opposition seems to have been made.

On the 2nd of April, 1949, Letters of Administration were extracted by the plaintiff and now in order to effect distribution he claims as follows :—

(i) for the surrender to him of the estate of the said deceased including the title-deeds of the immovable property thereof;
(ii) for an account to be taken by the Assistant Registrar, of the rents and profits received by the defendant for the period of 31 years in respect of the estate of the said deceased;
(iii) for payment by the defendant of such sum as may be found due on the taking of such account;
(iv) for costs;
(v) for any other or further order as this Honourable Court may think fit.

To this claim the defendant raises the preliminary issue of limitation in accordance with the provisions of Enactment No. 60 (Limitation), pleading section 26 which reads :—

> No suit for which no period of limitation is provided elsewhere in the Enactment shall be brought after the expiration of six years to be calculated from the time when the right to sue accrues.

Mr. Lim Cheng Ean argued that the defendant is either an executrix *de son tort* or a co-heir in possession. As regards to the latter Mr. Taylor was correct in reply that there is no such position in Muhammedan Law, a co-heir is unknown.

On the other hand it may be that a cardinal point of this action is an effort by the plaintiff to recover the distributive share which may have been due to his mother, Selamah binti Mat Anun (deceased), although that cannot be apparent on the face of the writ; the suit is by an Administrator in order to administer and distribute. To what extent the other beneficiaries are disinterested, as Mr. Lim Cheng Ean claims, I cannot yet know.

But the defendant with quite a representative gathering of the family appeared on the 30th of October, 1948, when Letters of Administration were granted to the plaintiff, and by so doing must be presumed to have acquiesced for there is nothing before me to show dissension. The only inference I can draw is that there was then a desire that the estate of Said bin Mat Amin should be administered and distributed by the plaintiff. I do not think, therefore, that less than a year later the defendant can resist distribution. The time to have contended the point was when application was made by the plaintiff for the Letters of Administration.

Even then resistance would not have been easy. The parties are Moslems and the distribution of this estate is governed by Muhammedan Law. In that Law limitation does not apply (Rustomji, 5th Edn., p. 1102: Wilson, 6th Edn., p. 261). I do not say that in every case the Limitation Enactment is barred to Moslems, that would make Enactment No. 60 (Limitation) meaningless, for it is an Ordinance enacted for and in a state wherein a large number of the population is Moslem. But with regard to a suit whose object is the distribution of an estate by an Administrator whose appointment was presumably with the assent of the defendant and in order to distribute the estate, I do not find that section 26 of Enactment 60 (Limitation) can avail. There are many sections in the Enactment, and if it had been intended to cover a case in which late or deferred application was made for Letters of Administration it would have said so.

Indeed without the appointment of an Administrator the shares to which heirs are entitled are not deliverable. In Muhammedan Law the property of a

person dving intestate vests in his heirs, but title to land, except in small estates, cannot pass unless by the Administrator.

I do not propose to do more than mention sections 17 and 18 of Enactment No. 1 (Administration of Estates). I wish these sections were more rigidly regarded and in the case of section 18 that offenders be prosecuted.

Mr. Lim Cheng Ean for the defendant cited a number of cases in support of his plea of limitation, but I do not think it was sufficiently appreciated that the parties in this suit are governed by the Muhammedan Law of inheritance. Had the necessary steps been taken on the death of Said bin Mat Amin the distributive proportions would have been declared by the Kathi in accordance with the provisions of the Muhammedan Law of inheritance.

Wilson (6th Edn. p. 261) discloses the sharp difference between the Hindu joint family and the Moslem. After stating that in practice the estate of a deceased Muhammedan often remains for a long time undivided, the descendants continuing to live together like a Hindu joint family, it goes on to cite the conflicting judgments that once existed and the conclusion ultimately reached removing the limitation period from Moslems (Rustomji 5th Edn. p. 1101/2).

Thus I hold that in this particular case and under the peculiar circumstances whereby the defendant was present and apparently assented to the appointment of the plaintiff as administrator she cannot some months later oppose him when he seeks to perform the duties required of him by virtue of his appointment to administer and distribute the estate.

I should make it clear that in this decision I have not declared that the defendant or anyone in possession should vacate the land in question. I simply say that the defendant cannot successfuly plead section 26 of Enactment No. 60 (Limitation) to prevent the surrender of the title deeds. These deeds should remain in the custody of this Court until the determination of this suit or until further order made. As to the claim for account I make at present no order. I doubt if the defendant is capable of rendering any account, and even if so the period back for which liability may exist is doubtful.

The suit should proceed; the preliminary objection is not upheld.

Preliminary Objection Overruled.

TAN CHENG CHUAN v. INDIAN OVERSEAS BANK LTD.

[Orig. Civ. Juris. (Callow, J.) July 18, 1949]

[Penang — Civil Suit No. 34 of 1949]

Damages for dishonour of cheque — Banker and Customer — Quantum of damages.

This was an action for damages consequent upon the dishonouring by the defendant bank of the plaintiff's cheque. The cheque was wrongly dishonoured and the defendant bank admitted their error.

Held, that the plaintiff was entitled to reasonable compensation for injury to his credit and in the circumstances of the case was entitled to damages of $1,000/-.

Case referred to :—

(1) *Rolin and another v. Steward* (1854) 23 L.J. 148.

CIVIL SUIT.

Ong Huck Lim for the Plaintiff.

F. G. Pooley for the Defendants.

Cur. Ad. Vult.

Callow, J. : — This is a claim for damages consequent upon the dishonouring by the defendant bank of the plaintiff's cheque.

The facts are not in dispute. The plaintiff is the contractor for the Canteen of the Chung Ling High School, Penang. It is a large school of some 1,500 pupils and 60 teachers.

On the 11th of January, 1949 the plaintiff drew a cheque for $439.65 payable to Messrs. Chiat Moh. This cheque was dishonoured.

On the 14th of January, 1949 the plaintiff accompanied by the drawer's son (2nd Witness) visited the bank. The defendant bank admitted the error and the plaintiff drew his balance which exceeded the amount of the dishonoured cheque, closing the account.

It is shown that in consequence of this episode the drawer of the dishonoured cheque, Messrs. Chiat Moh, closed the plaintiff's credit account and now insist on cash; further that the Refrigerator Service Company cancelled an offer to sell the plaintiff an Ice-maker Machine on the hire purchase system and demanded cash, and the 4th witness Yeow Bong Peng who formerly granted the plaintiff a credit account of some $300.00 per mensem insisted on cash after the dishonour of the cheque.

The defendant bank acknowledged their error and endeavoured to make amends, but the parties were unable to agree upon the quantum of damages.

Clearly the plaintiff is entitled to reasonable compensation for injury to his credit (Chitty, 19th